

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ENRIQUE MORENO	§	
VS.	§	CIVIL ACTION NO. 1:13cv114
WARDEN VASQUEZ	§	

MEMORANDUM ORDER OVERRULING PETITIONER’S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Petitioner Enrique Moreno, an inmate confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition be dismissed.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record and pleadings. Petitioner filed objections to the Magistrate Judge’s Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes petitioner’s objections are without merit. Petitioner requests a reduction in his sentence and injunctive relief. Accordingly, the challenge contests the legality of his conviction and confinement. *See Nichols v. Symmes*, 553 F.3d 647, 649-50 (8th Cir. 2009); *Peak v. Petrovsky*, 734 F.2d 402, 405 n.6 (8th Cir. 1984). Therefore, to the extent petitioner is using his claim of breach of the plea agreement to challenge the legality of his conviction and sentence, the claim is a 28 U.S.C. § 2255 challenge. *See Braddy v. Fox*, 537 F. App’x 469, 469-70 (5th Cir. 2013); *Jeffers v. Chandler*, 253 F.3d 827, 830 (5th Cir. 2001). This court is without jurisdiction to entertain petitioner’s § 2255 challenge, however, because petitioner was convicted in the United States District Court for the Southern District of Texas. Further, the petition does not meet the criteria required to support a claim under the savings clause of 28 U.S.C.

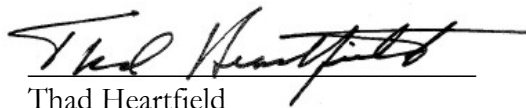
§ 2255. *See Padilla v. United States*, 416 F.3d 424 (5th Cir. 2005); *Reyes-Requena v. United States*, 243 F.3d. 893 (5th Cir. 2001).

Additionally, petitioner requests compensatory damages. However, petitioner's claims for monetary damages related to the conditions of his confinement do not contest the fact or duration of his confinement and cannot serve as a basis for habeas corpus relief, as the magistrate judge determined. Petitioner's civil rights claims have been severed from this action by the magistrate judge to proceed as a separate action.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED this the **4** day of **December, 2015**.


Thad Heartfield
United States District Judge